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U.S. SUPREME COURT

IN THE
Supreme Court of the United States

December Term, 1962

85-25
No. 85-25

WILLIAM L. GREENE, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

STEPHEN L. KRESNAR AND NOVERA H. SPECTOR,
Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

On Petition for Writs of Certiorari to the United States
Court of Claims

PETITIONERS' REPLY MEMORANDUM

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April 9, 1963.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

Nos. 887 and 888

WILLIAM L. GREENE, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

STEPHEN L. KREZNAR AND NOVERA H. SPECTOR,
Petitioners,

v.

UNITED STATES OF AMERICA, *Respondent.*

On Petitions for Writs of Certiorari to the United States
Court of Claims

PETITIONERS' REPLY MEMORANDUM

The United States, in its opposing brief in No. 887, rewrites the holding of this Court in *Greene v. McElroy*, 360 U.S. 474. This is evident from the following:

This Court's holding,
360 U.S. at 508:

"We decide only that in the absence of explicit authorization from either the President or Congress *the respondents were not empowered to deprive petitioner of his job in a proceeding in which he was not accorded the safeguards of confrontation and cross-examination.*"
[Emphasis added.]

The Government's revision,
Brief in Opp., p. 3:

"On June 29, 1959, this Court held that, 'in the absence of explicit authorization from either the President or Congress', *petitioner could not be finally deprived of his security clearance* in a proceeding in which he was not accorded the safeguards of confrontation and cross-examination. *Greene v. McElroy*, 360 U.S. 474, 508."
[Emphasis added.]

This transparent revision reflects the Government's consistent reluctance to accept this Court's premise in *Greene*, 360 U.S. at 492, that "the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment." The entire focus of the *Greene* decision was on the deprivation of this right to a job by virtue of an unauthorized procedure lacking the safeguards of confrontation and cross-examination.

The Government's attempt by truncated quotation to shift the Court's holding away from employment rights and over to security clearance bares the flaw in its opposition to the instant back pay claims. If *Greene* could be rewritten so as to decide merely what the Government now says it means (Brief in Opp. app. 6-7)—i.e., that "All that the Court decided was that there was a procedural infirmity in the hearing which preceded the final revocation of the security clearance"—then the Government perhaps could claim that it need do nothing more than provide a new procedure free of such defects for purposes of determining access authorization.

But the Court in *Greene* rejected the Government's argument that the right to access clearance was the sole issue. Without passing on his right to access authorization*, the Court held that petitioner Greene had been illegally deprived of his job. Thus petitioners,

* The Brief in Opposition (p. 6) claims that petitioner Greene suggests that the *Greene* decision "established petitioner's right both to access authorization and to money damages . . ." What petitioner actually said (petition, p. 18) is something quite different: "The fact that the Court in *Greene* did not determine that Greene was entitled to access, of course, is not relevant to his right to restitution for illegal loss of his job."

having been deprived of property by "unreasonable governmental interference"; 360 U.S. at 492, necessarily are entitled to be made whole for the resulting damages. Merely providing presidential authorization or curing procedural defects does not erase the past deprivations of property rights or eliminate the obligation to make restitution for the losses suffered.

The importance and substantiality of the questions presented have not been denied. The only claim is that they are premature. But review here cannot be premature where the alleged necessity of following further administrative proceedings, having no relevance to the right of restitution, in and of itself raises significant issues justifying the grant of certiorari. *Levers v. Anderson*, 326 U.S. 219, 220-221.

In light of the inability of the Government to face the issues presented in the petition without grossly distorting the *Greene* decision, the need for plenary review of the action below is indisputable; indeed, petitioners suggest that summary reversal is now in order.

Respectfully submitted,

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